

REMARKS

The application has been reviewed in light of the October 7, 2002 Office Action. Claims 2-21 are pending in the application. Claim 1 has been cancelled without prejudice against prosecution in further applications. Claims 3 and 8 have been amended and new claims 14-21 have been added.

Initially, Applicants request clarification of the Examiner's statement concerning the listing of references in the specification. Applicants' undersigned representative has reviewed the specification and did not find any "listing of references". Additionally, it is noted that the Examiner has indicated consideration of the items listed in the PTO-1449 form submitted with the April 10, 2002 Information Disclosure Statement.

Claim 8 was rejected under 35 U.S.C. §112. The claim has been amended in a manner which is believed to overcome the outstanding rejection.

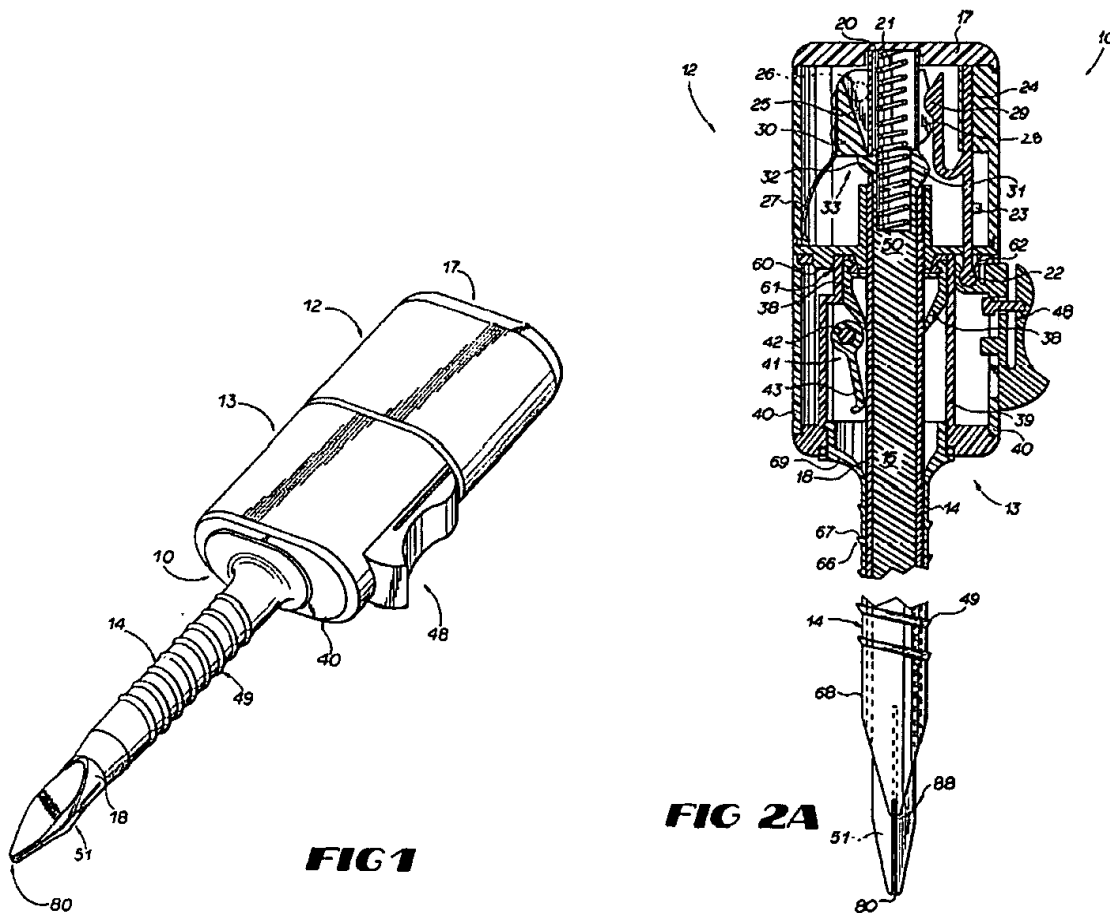
Claims 1-10 were rejected based upon obviousness-type double patenting. Upon the allowance of the claims Applicants will submit a terminal disclaimer if the Examiner maintains the rejection.

In the Office Action, claims 1-13 were rejected under 35 U.S.C. §102(b) in view of U.S. Patent No. 5,868,773 (Danks). Independent claim 1 has been cancelled and claim 3 has been rewritten in independent form to incorporate the recitations of claim 1. The remaining claims originally dependent upon claim 1 have been renumbered to depend either directly or indirectly from claim 3. Applicants respectfully traverse the rejection with respect to claim 3.

Anticipation under 35 U.S.C. § 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention. *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 20, 57 USPQ2d 1057, 1061 (Fed. Cir. 2000). The Office Action fails to

identify the disclosure in the Danks patent of each and every limitation of claim 3 from which claims 2-13 now depend.

The Office Action equates trigger 48 of Danks to the release member recited in claim 3 and states that it has “a button portion (without specifically identifying the structure) and a camming surface inside the housing on the proximal end of the [trigger]”. For illustrative purposes FIGs. 1 and 2A of Danks are reproduced below.



In contrast to the disclosure of Danks, claim 3 recites that the button portion of the release member protrudes at least partially through an opening formed in the distally facing end surface

of the obturator housing. In each of the embodiments of the Dank patent, such as shown in FIGs. 1 and 2A above, there is no structure or portion of the trigger 48 disclosed or suggested which extends through an opening formed in the distally facing end surface of the obturator housing. In the embodiments illustrated in the Dank patent, the trigger 48 is mounted to the cannula housing and not the obturator housing. There is mention in the Dank patent specification that “[a]lthough the illustrated trigger 48 in FIG. 2A is mounted on the cannula 13, it is also possible to place the trigger 48 on the obturator 12 and utilize another guiding tab 60 in place of the linking member 24 to join the cannula 13 and obturator 12”. (Col. 5, l. 19-23). However, this still does not disclose or suggest a button portion which extends through an opening formed in the distally facing end surface of the obturator housing, as recited in claim 3. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Regarding independent claim 11, Dank requires that:

In order to permit the shield 15 to be retracted, the latch means 33 must first be armed or actuated. In the embodiment illustrated in FIG. 2A, the distal end 22 of the linking member 24 engages with a trigger 48. When the trigger 48 is depressed and pushed forward toward the piercing tip 80, the linking member 24 is likewise pulled forward.

(Col. 4, l. 50-55. Emphasis added.)

In contrast claim 11 recites in part the step of approximating an obturator assembly with a cannula assembly such that a button portion of a release member is urged proximally (*i.e.*, away from the piercing tip) and a camming surface of the release member imparts lateral movement of a blocking surface of a latch. Thus, the button portion of the release member is moved in exactly the opposite direction as the trigger 48 of the Dank patent. Accordingly, reconsideration and withdrawal of the rejection as pertains to claims 11-13 is respectfully requested.

New claims 14-21 are also not disclosed or suggested by the Dank patent or the remaining art of record.

In view of the above remarks, each of the pending claims 2-21 are believed to be allowable over the art of record. Therefore, reconsideration and withdrawal of the outstanding rejections are respectfully requested. Should the Examiner believe that a telephone or a personal interview may facilitate resolution of any remaining matters, he is respectfully requested to telephone Applicant's undersigned representative at the number indicated below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Raymond E. Farrell", written in a cursive style.

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REF/af

MARKED-UP VERSION OF CLAIMS

2. (Once Amended) A trocar system as recited in claim [1] 3 wherein the movement of the release member causes the blocking surface to be displaced out of axial alignment with the shield.

3. (Once Amended) A trocar system [as recited in claim 1] which comprises:

a cannula forming an opening longitudinally therethrough and having a proximally facing surface disposed near a proximal end thereof; and

an obturator assembly being at least partially insertable through the cannula and including:

a housing disposed at a proximal end, the housing including a base portion having a distally facing end surface configured and dimensioned to facilitate close proximate positioning thereof with the proximally facing surface of the cannula;

a penetrating tip disposed at a distal end;

an elongated shield including a guard extending from a shaft, the penetrating tip and guard being movable relative to one another; and

a latch mechanism disposed generally within the housing, which facilitates changing the configuration of the obturator assembly between a fixed-shield orientation, wherein at least a portion of the guard is maintained to extend at least partially distal of the penetrating tip to prevent puncturing of tissue by the penetrating tip, to a non-fixed shield orientation whereby upon application of force to the distal end of the obturator assembly, the guard and penetrating tip are permitted to move relative one another to facilitate puncturing of tissue by the penetrating tip, the latch mechanism including:

a release member having a button portion and a camming surface; wherein the button portion protrudes at least partially through an opening formed in the distally facing end surface of the obturator housing, and

a latch operatively associated with the release member, the latch having a clocking surface and a mating surface, the mating surface cooperating with the camming surface of the release member such that upon movement of the release member the camming surface biases the mating surface to move the latch such that the blocking surface permits axial movement of the shield.

8. (Once Amended) A trocar system as recited in claim 3 wherein the elongated shield includes an extended surface which is disposed on the shield such that upon axial movement of the shield, the extended surface biases the [actuator] release member away from the latch to permit the latch to return to its original orientation.

14. (New) A trocar system which comprises:

a cannula forming an opening longitudinally therethrough and having a proximally facing surface disposed near a proximal end thereof; and

an obturator assembly being at least partially insertable through the cannula and including:

a housing disposed at a proximal end, the housing including a base portion having a distally facing end surface configured and dimensioned to facilitate close proximate positioning thereof with the proximally facing surface of the cannula;

a penetrating tip disposed at a distal end;

an elongated shield including a guard extending from a shaft, the penetrating tip and guard being movable relative to one another; and

a latch mechanism disposed generally within the housing, which facilitates changing the configuration of the obturator assembly between a fixed-shield orientation, wherein at least a portion of the guard is maintained to extend at least partially distal of the penetrating tip to prevent puncturing of tissue by the penetrating tip, to a non-fixed shield orientation whereby upon application of force to the distal end of the obturator assembly, the guard and penetrating tip are permitted to move relative one another to facilitate puncturing of tissue by the penetrating tip, the latch mechanism including:

a release member having a button portion extending distally in axial alignment with at least a portion of the proximally extending surface of the cannula and a camming surface;

a latch operatively associated with the release member, the latch having a clocking surface and a mating surface, the mating surface cooperating with the camming surface of the release member such that upon movement of the release member the camming surface biases the mating surface to move the latch such that the blocking surface permits axial movement of the shield.

15. (New) A trocar system as recited in claim 14 wherein movement of the release member causes the blocking surface to be displaced out of axial alignment with the shield.

16. (New) A trocar system as recited in claim 14 wherein the button portion protrudes at least partially through an opening formed in the distally facing end surface of the obturator housing.

17. (New) A trocar system as recited in claim 14 wherein the latch is biased such that the blocking surface is normally disposed in axial alignment with at least a portion of the shield to prevent axial movement thereof.
18. (New) A trocar system as recited in claim 15 wherein the blocking surface is disposed proximal of the at least a portion of the shield.
19. (New) A trocar system as recited in claim 14 wherein the release member is configured and dimensioned such that axial movement of the release member imparts lateral movement of the blocking surface of the latch member.
20. (New) A trocar system as recited in claim 14 wherein the obturator includes a shaft fixed relative to the housing and the penetrating tip is a flat knife blade secured to the shaft.
21. (New) A trocar system as recited in claim 14 wherein the shield includes an extended surface which is disposed on the shield such that upon axial movement of the shield, the extended surface biases the release member away from the latch to permit the latch to return to its original orientation.